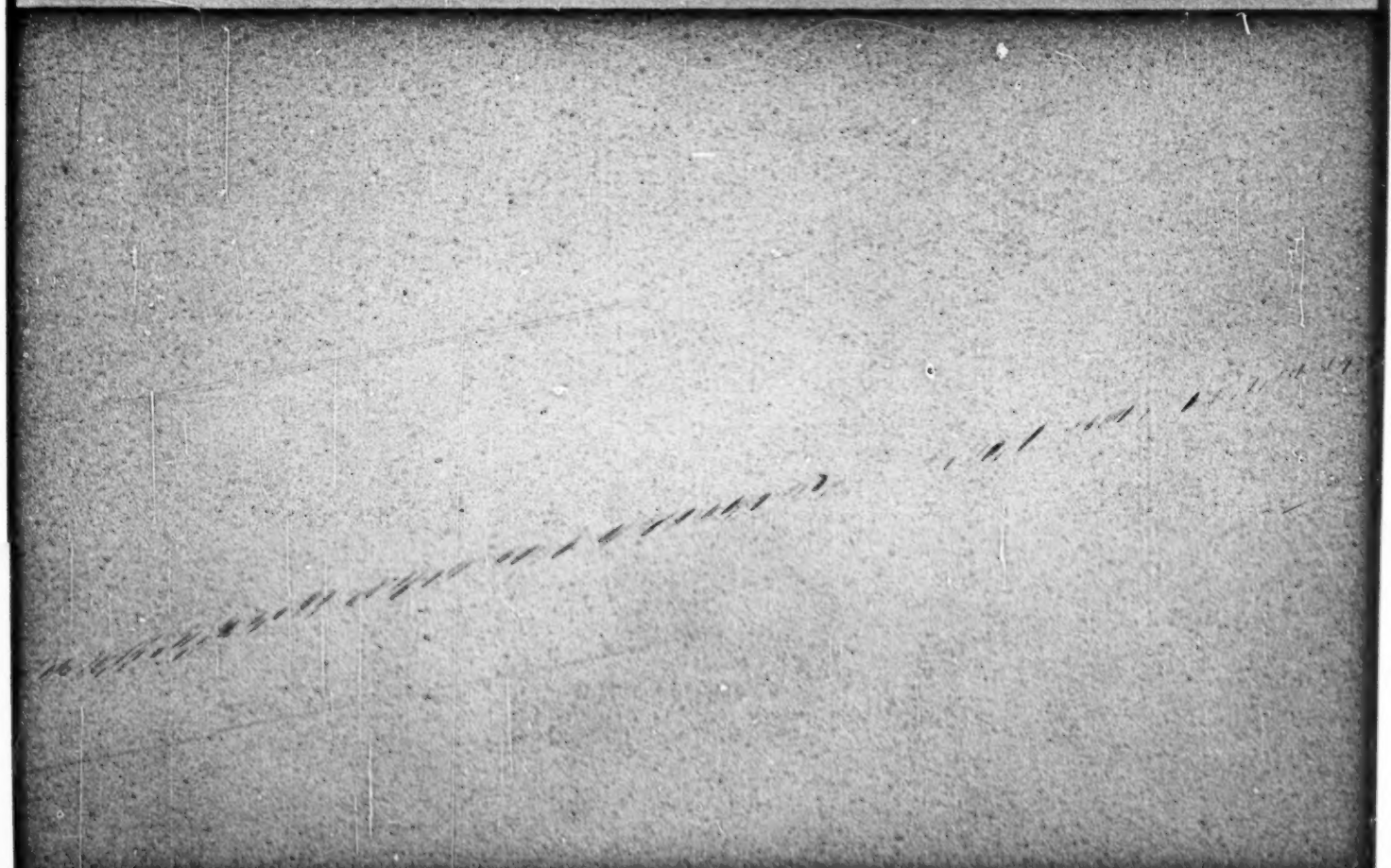


SUPREME COURT, U. S.

IN THE

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OCTOBER TERM, 1973

U. S.
FILED
SEP 20 1974
MICHAEL RODAK, JR., CLERK

No. 73-1828

OLGA HOCHFELDER, et al.,

Petitioners,

vs.

MIDWEST STOCK EXCHANGE,

Respondent,

LEON S. MARTIN, et al.,

Petitioners,

vs.

MIDWEST STOCK EXCHANGE,

Respondent.

RESPONDENT'S SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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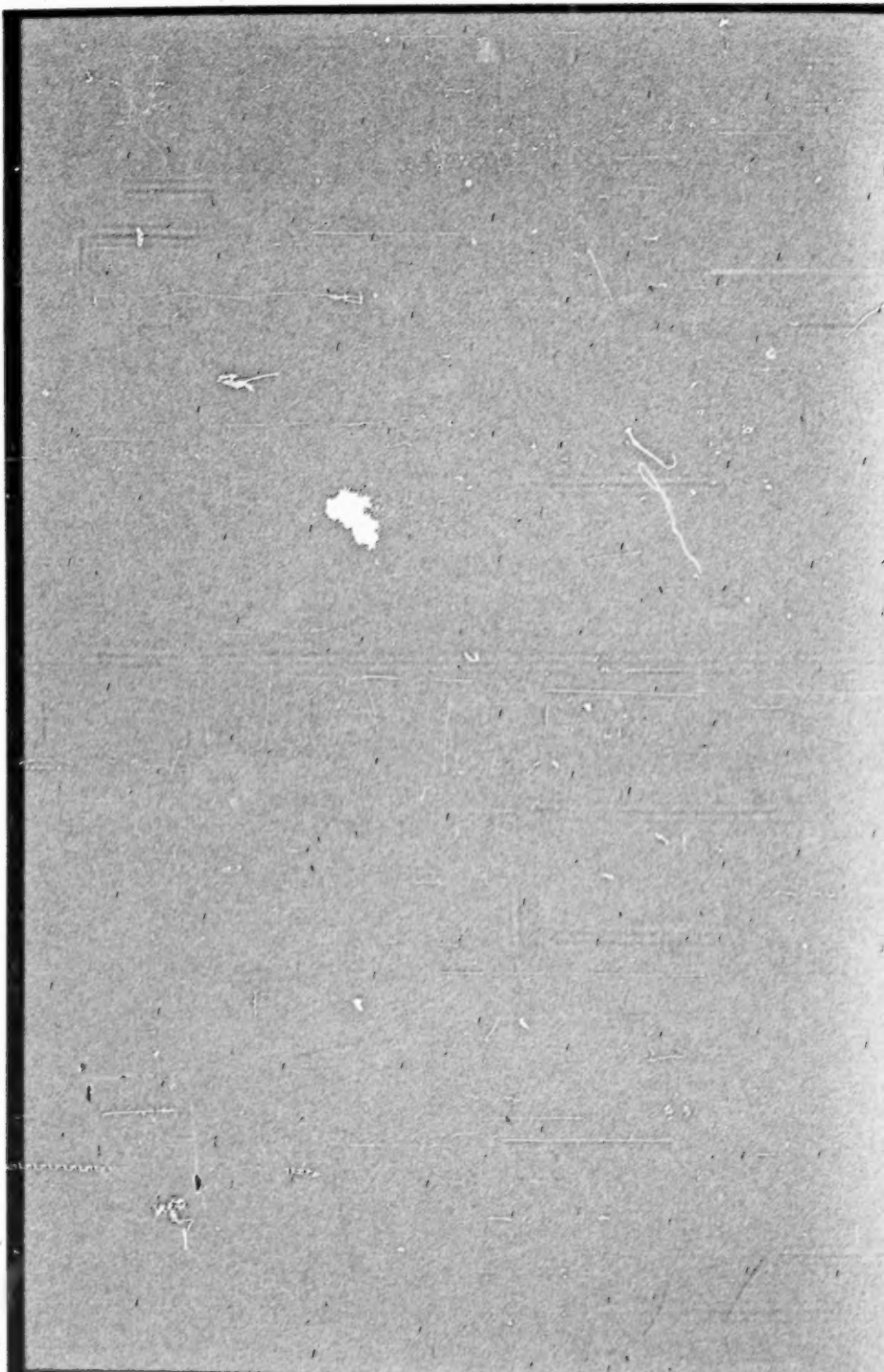
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RESPONDENT'S SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

In Respondent's Brief in Opposition to Petition for Writ of Certiorari filed herein on July 2, 1974, respondent Midwest Stock Exchange cited the district court opinion in the related cases styled *Hochfelder* v. *Ernst & Ernst,* Case Nos. 71 C 454 and 71 C 1204 (N.D.Ill. August 1, 1973) (Brief in Opposition, p. 13 n.*), in support of its contention that there are alternative grounds for entering judgment for respondent apart from the bases on which the Court of Appeals ruled. Specifically, the Brief in Opposition pointed out that in the related cases against Ernst & Ernst, auditor

for First Securities Company of Chicago, the district court had held as a matter of law that the claims of the plaintiffs, who are the same as in the instant cases, were barred by the statute of limitations on the ground that plaintiffs had not acted diligently in discovering Nay's fraud.

We wish to advise the Court that that district court decision has been reversed. *Hochfelder* v. *Ernst & Ernst,* Case Nos. 73-1907 and 73-1908, CCH Fed. Sec. L. Rep. ¶ 94,781 (7th Cir. August 30, 1974) [Current Binder]. The Court of Appeals held, *inter alia,* that there were genuine issues of fact on the statute of limitations question and remanded the cases for a trial. Of course, nothing in that opinion constitutes a holding that plaintiffs were in fact diligent, only that there are questions of fact on that issue.

Moreover, nothing in the cited opinion casts any doubt upon the legal principles applied or the result reached by the Court of Appeals herein. The major difference between the decision in the cases involving Ernst & Ernst and the instant cases involving respondent Midwest Stock Exchange is that the same panel of the Court of Appeals held that there were genuine issues of material fact in the former cases but not in the instant cases.

Respondent therefore again urges that the petition be denied.

Respectfully submitted,

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